IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 35292 of 2007(B)

AGAINST THE ORDER IN EA.1316/07 IN EP.454/05 IN OS.516/1999 OF II ADDL.SUB COURT,THRISSUR

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PETITIONER:

T.A.DENNI, AGED 33 YEARS,
S/O THATTIL CHEENIKKAL ANTHONEY,
ARANATTUKARA VILLAGE DESOM,
THRISSUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU,
SRI.M.GEORGE THOMAS.

RESPONDENTS:

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1. **SAKTHAN KURIES & LOANS(P)LTD.,**
   THRISSUR, CHEMBUKAVU VILLAGE.

2. **C.C.VARKEY, S/O THATTIL CHEENIKKAL**
   CHAKKUNNI, BROTHERS LANE, THRISSUR.

3. **C.C.ANDREWS,**
   S/O THATTIL CHEENIKKAL CHAKKUNNI,
   MAILIPPADAM DESOM, CHEMBUKKAVU VILLAGE,
   THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 35292 OF 2007

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Dated this the 29th day of November, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Thrissur in E.P.454/05 in O.S.516/99 which is an application filed for arrest and detention of judgment debtors 2 to 4, i.e., respondents 1 to 3. The Court found the means against all and ordered arrest. Meanwhile, the decree holder filed Ext.P3 in May, 2007 whereby he did not seek relief against respondents 1 and 2. So, ultimately, now the whole burden has come upon the 3rd respondent. Even according to the decree holder the income derived by the 3rd respondent is about Rs.10,000/- per month. It is true that he did not contest the case properly and later he filed an application stating that as he was at Vellore in connection with the treatment of his mother on account of the heart problem, he was unable to contest the case properly but still expresses his desire to discharge the decree debt at the rate

of Rs.5,000/- per month. So at least there is an element of bonafide for discharging the decree debt. It is also equally unfortunate that the decree holder is not proceeding against the principal judgment debtor and only proceeding against the surety. It is true that the liability of the surety is co-extensive with that of the principal judgment debtor but a person who advances money should always bear in mind that it is the recipient of the money who has to pay back the amount. I leave it to the good conscience of the decree holder to proceed against the other people as well. But considering the facts and circumstances I feel this is a fit case where some indulgence can be shown to the present writ petitioner and the writ petition is disposed of as follows.

2. The writ petitioner is directed to wipe off the entire liability, i.e, the decree debt, in eight monthly equal instalments with the first instalment to commence from 3.1.08. If he commits default of the first instalment or commits default of any two consecutive instalments thereafter he will forfeit the benefit granted to him under this

order. Since such a facility is provided the arrest of the present writ petitioner, namely the 3rd respondent, be deferred. The decree holder may also consider why he shall not proceed against the person who had received the amount as well.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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